

REMARKS

Claims 1–20 are pending in the present application.

Claims 1–10 and 17–20 were amended herein.

Reconsideration of the claims is respectfully requested.

35 U.S.C. § 112, Second Paragraph (Definiteness)

Claims 1–10 and 17–20 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This rejection is respectfully traversed.

Claims 1, 9–10 and 17 were amended herein to alter the claim language objected to in the Office Action

Therefore, the rejection of claims 1–10 and 17–20 under 35 U.S.C. § 112, second paragraph has been overcome.

35 U.S.C. § 102 (Anticipation)

Claims 1–2, 4, 6, 8–11, 13, 15, 17–18 and 20 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,285,926 to *Falk et al.* This rejection is respectfully traversed.

A claim is anticipated only if each and every element is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. MPEP § 2131 at p. 2100-76 (8th ed. rev. 3 August 2005).

Amended independent claims 1, 10 and 17 each recite that the tray is adapted to be divided by a radially askew subdivider. Such a feature is not found in the cited reference.

Therefore, the rejection of claims 1–2, 4, 6, 8–11, 13, 15, 17–18 and 20 under 35 U.S.C. § 102 has been overcome.

35 U.S.C. § 103 (Obviousness)

Claims 5 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Falk et al.*. Claims 3 and 12 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Falk et al.*. In view of U.S. Patent No. 4,317,604 to *Krakauer* Claims 7, 16 and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Falk et al* in view of U.S. Patent No. 5,313,393 to *Varley*. These rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142, p. 2100-133 (8th ed. rev. 3 August 2005). Absent such a *prima facie* case, the applicant is under no obligation to produce evidence of nonobviousness. *Id.*

To establish a *prima facie* case of obviousness, three basic criteria must be met: First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or

suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *Id.*

As noted above, independent claims 1, 10 and 17 recite limitations not found in *Falk et al.* Such limitations are also not found in the remaining cited references.

Claims 5 and 7 have been rewritten in independent form. Claim 5 recites a specific combination of number of trays per level and trays, level spacing and number of tray zones disclosed in the specification (paragraphs [0030]-[0031]) as allowing placement of soft drink cans and nine inch platters on tray sections. Nothing in the cited references suggests these features.

Claim 7 recites a catch on the tray subdivider stopping the vend door. Such a feature is not found in the cited references.

Therefore, the rejection of claims 3, 5, 7, 12, 14, 16 and 19 under 35 U.S.C. § 103 has been overcome.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *dvenglarik@davismunck.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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